

11468
RECORDATION NO. Filed 1425

FEB 5 1980 - 2 15 PM
INTERSTATE COMMERCE COMMISSION

United States
Rail Services, Inc.



633 Battery Street
San Francisco, California 94111
(415) 445-7690

January 28, 1980

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Secretary
Interstate Commerce Commission
Washington D. C. 20423

No. **0-036A130**

Date **FEB 5 1980**

Fee \$ **50.00**

ICC Washington, D. C.

Dear Mr. Secretary:

On behalf of United States Rail Services, Inc., I submit for filing and recording under 49 U.S.C. Sec. 11303(a) four counterparts of a Car Lease and Schedule No. 1 dated November 16, 1979, between United States Rail Services, Inc. and American Rail Heritage, Ltd. d/b/a Crab Orchard & Egyptian Railroad, all of which are duly notarized.

The equipment covered by the above Lease is as follows:

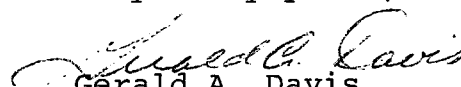
25 Open Top Hopper Cars, 4000 cubic foot,
COER 3000 - 3024

Enclosed is a check in the amount of \$50.00 in payment of the recording fee.

Once the filing has been made, please return in the enclosed self-addressed stamped envelope, (a) the file stamped conformed counterparts not required for filing purposes, (b) the fee receipt, (c) the letter from the Interstate Commerce Commission acknowledging the filing, and (d) the extra copy of this letter of transmittal.

Should you have any questions, please call me at (415) 445-7655.

Very truly yours,


Gerald A. Davis
Secretary

GAD:lw
Encls

Interstate Commerce Commission
Washington, D.C. 20423

2/21/80

OFFICE OF THE SECRETARY

Gerald A Davis, Sec.
United States Rail Services, Inc.
633 Battery Street
San Francisco, California 94111

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/3/80 at 2:15pm, and assigned re-recording number(s). 11462

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

CAR LEASE AND SCHEDULE NO. 1

Lessee: American Rail Heritage, Ltd. d/b/a Crab Orchard & Egyptian Railroad
 Car Lease No: 79-08
 Date: NOV 16 1979

AAR Mech. Design	Description	Numbers	Inside			Door Width if applicable	Quan- tity
			Length	Width	Height		
HT	Open Top Hopper Cars 4000 ft. ³	COER 3000 - COER 3024	45' 0"	9' 9 1/2"	12'- 3 1/2"	N/A	25

Anticipated Delivery Date:	3-1-80	
Term:	15	years
Latest Available Delivery Date:	6-30-80	
Base Rental Utilization Percentage:	88	percent
Base Miles Per Day:	100	miles
Incentive Charge Sharing Percentage: (when applicable)	N/A	percent
Maximum On Line Percentage:	12	percent
Minimum Utilization Percentage:	88	percent

RECORDATION NO. 11468
 FEB 5 1980
 INTERSTATE COMMERCE COMMISSION
 2:15 PM

UNITED STATES RAIL SERVICES, INC. ("Lessor") agrees to lease to the above named lessee ("Lessee") and Lessee agrees to lease from Lessor the group of cars described on the above Schedule and all other group(s) of cars described on any Schedule(s) hereafter executed by the parties and made a part of this Agreement (collectively "Cars") on the following terms and conditions:

1. General: Lessor shall order each Group of Cars for delivery to Lessee commencing on the Anticipated Delivery Date. Lessee shall lease each Group from Lessor for the Term which shall commence upon the execution of the Schedule for a Group and expire, unless terminated as elsewhere provided in this Agreement, the number of years in the Term after actual delivery of the last Car in such Group or the Latest Available Delivery Date for such Group, whichever date is first. As rental for all Cars, Lessee shall pay Lessor an amount measured by the revenues resulting from the use of the Cars by railroads other than Lessee ("Net Car Hire Revenues") up to the Base Rental, determined as set forth below, plus all amounts earned by each Car in excess of its Base Rental prior to its first loading on the line of Lessee.

The Base Rental for each calendar year shall be an amount equal to the total for all Cars commencing on the respective Initial Loading of each Car of (a) the hourly time charge applicable to each Car, multiplied by its Base Rental Utilization Percentage and multiplied by the number of hours in the calendar year the Car was subject to this Agreement; plus (b) the mileage rate applicable to each Car, multiplied by its Base Miles Per Day, multiplied by its Base Rental Utilization Percentage and multiplied by the number of days in the calendar year the Car was subject to this Agreement; plus (c) the incentive hourly charges applicable to each Car, multiplied by its Incentive Charge Sharing Percentage, multiplied by its Base Rental Utilization Percentage and multiplied by the number of hours in the calendar year the Car was subject to this Agreement.

To the extent permitted by applicable rules, when the percentage of a Group on Lessee's line exceeds its Maximum On Line Percentage, Lessee shall give such Group preference in loading for shipment off its line over all comparable equipment. At Lessor's option, Lessee shall return all or a part of a Group to Lessor if Lessee does not meet its Minimum Utilization Percentage.

2. Definitions. When used in this Agreement, the following terms shall have the following meanings:

- (a) Agreement: This Car Lease and all Schedules thereto.
- (b) AAR: American Association of Railroads or any successor thereto.
- (c) Utilization Percentage. A percentage separately computed for each Group equal to (i) the aggregate number of hours in the relevant period during which Car Hire Revenues are earned by Cars in the Group, divided by (ii) the aggregate number of hours in such period that such Cars are on lease to Lessee. For purpose of computing the Utilization Percentage, a Car shall be on lease commencing with its Initial Loading.
- (d) Base Rental: The amount for a calendar year for all Cars as defined in Section 1.
- (e) Car Hire Revenues: All amounts payable by any railroad line for the use of a Car including but not limited to, incentive time charge payments, hourly time charge payments, and mileage charges, but excluding any sum payable as a consequence of the loss of or damage to a Car.
- (f) Delivery Date: The date for each Car upon which Lessee or Lessor, as agent for Lessee, accepts delivery of such Car under this Agreement pursuant to Section 3.4.
- (g) Group: The Cars leased under a particular Schedule.
- (h) ICC: Interstate Commerce Commission or any successor thereto.
- (i) Initial Loading: The first loading of a Car, whether on the Lessee's line or on the line of any other railroad.
- (j) Net Car Hire Revenues: Car Hire Revenues less any sales or use taxes included in or due thereon or measured by any amounts payable by Lessee to Lessor as rental.
- (k) Other Equipment: Freight cars (other than the Cars) owned or leased by Lessee or which are available for use by Lessee through any private supplier, interchange with railroads or otherwise.

3. Delivery

3.1 Delivery. The Anticipated Delivery Date is Lessor's best estimate of the Delivery Date of the first Car in a Group. It shall be subject to, and appropriately adjusted for, the manufacturer's prior scheduling, any delays encountered by such manufacturer in manufacturing the Cars, and any other delays beyond Lessor's or the manufacturer's reasonable control. Lessor shall keep Lessee reasonably advised of any changes in the Anticipated Delivery Date and the expected Delivery Dates of the other Cars in the Group. No adjustment of the Anticipated Delivery Date shall be a breach of this Agreement nor excuse either party from performance of this Agreement.

3.2 Specifications. The Cars in each Group shall conform to the general speci-

fications set forth in the Schedule covering them and to all applicable governmental and regulatory requirements. The Cars shall bear the colors, railroad markings, name and insignia as designated by Lessee and permitted by applicable regulations. If the railroad markings are not known at the time a Car is made subject to this Agreement, Lessee hereby authorizes Lessor to complete this Agreement with such markings prior to the Delivery Date of such Car. The Cars may bear, on their delivery and during the Term, any appropriate markings reflecting Lessor's or any other party's interest therein.

3.3 Inspection of Sample Car. Prior to the commencement of each Group's delivery, a sample Car will be made available to Lessee and Lessor at the manufacturer's plant for mutual inspection. Lessee shall confirm in writing to Lessor that the sample Car conforms to the specifications applicable thereto.

3.4 Inspection and Delivery. As Lessee's agent, Lessor shall accept delivery of Cars at the manufacturer's facility or any other location chosen by Lessor to avoid or minimize sales, use or property taxes. Each Car shall be subject to this Agreement and deemed delivered to and accepted by Lessee for all purposes under this Agreement upon acceptance by Lessor.

3.5 Initial Loading. Following its Delivery Date, each Car shall be moved to Lessee's line at no cost to Lessee for its Initial Loading on Lessee's line. Lessor and Lessee acknowledge that due to the nature of railroad operations Lessor cannot control or determine when a Car will actually be available to Lessee for its Initial Loading. Prior to a Car's Initial Loading on Lessee's line, neither party shall, without the prior written consent of the other party, issue a movement order for such Car that would result in any cost or charge to Lessor.

3.6 Lessor's Option to Terminate. Lessor may terminate this Agreement with respect to any Car prior to its Delivery Date, (a) for which Lessor has not obtained and closed financing on terms and conditions satisfactory to it; (b) which Lessor in good faith believes will not earn Net Car Hire Revenues equal to the Base Rental therefor; or (c) which is not delivered or expected to be delivered by the manufacturer on or before the Latest Available Delivery Date.

3.7 Advices. Lessor shall advise Lessee of any circumstance which may reasonably preclude obtaining and closing satisfactory financing for a Group. Lessee shall at all times during the Term, keep Lessor advised and informed of and promptly answer Lessor's inquiries concerning (i) Lessee's intentions regarding any proposed acquisition of Other Equipment and (ii) any event (including any conclusion reached in any study, report or forecast conducted at the request of Lessee) which might have or indicate a material adverse effect on Lessee's utilization of the Cars.

4. Payment of Rental

4.1 Accrual of Rental. Rentals under Section 1 shall accrue as and when Net Car Hire Revenues are earned but shall be paid as provided in Sections 4.2, 4.3, and 4.4. Such rentals shall be paid from incentive hourly charges to the extent available to Lessee and then from other sources. Rentals due hereunder shall not be reduced by reason of disputes or claims between Lessee and/or Lessor and/or third parties.

4.2 Monthly Estimated Rental Payment. Lessee shall calculate for each service month an estimation of the Net Car Hire Revenues for such month on the basis of off

line utilization and/or "Summary Car Hire Reports" or other comparably reliable reports covering the Cars. Lessee shall pay to Lessor, and Lessor shall receive in good funds in San Francisco, California, on the dates set forth below the percentage set forth of the estimated total Net Car Hire Revenues or the Base Rental, whichever is less, earned by the Cars for the service month reported, including actual car mileage earnings when available or estimated earnings based on the Base Miles Per Day set forth in the respective Schedule(s):

- (a) 85% on the 60th day following the end of the service month;
- (b) 10% on the 90th day following the end of the service month; and
- (c) 5% on the 120th day following the end of the service month.

At the time the payment described in clause (a) above is made, Lessee shall report for the same service month, the dollar figure for 100 percent of the estimated Net Car Hire Revenues earned.

4.3 Quarterly Rental Settlement. Lessee shall within four (4) months after the end of each of the first three calendar quarters of each year, calculate on a cumulative quarterly basis, the rentals due Lessor for all service months in such year through the end of such quarter. All of such rentals so calculated and not paid as provided in Section 4.2 shall be paid promptly following such calculations.

4.4 Annual Rental Settlements. Lessee shall within five (5) months after the end of each calendar year, or in the case of termination for any reason of the Agreement, then within five (5) months after such termination, calculate on a cumulative basis for the service months in such year (or in the case of termination, for the service months since the end of the prior year) the rental due Lessor for such year or the period prior to such termination. All of such rentals so calculated and not paid as provided in Sections 4.2 and 4.3 shall be paid promptly following such calculation.

5. Operation; Movements; Preferences

5.1 Lessee's Use. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled during the Term to the control, use and quiet enjoyment of the Cars in accordance with the terms and conditions of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business. Lessor shall not be liable for any consequential damages or loss of profits resulting from the loss of, damage to or unavailability of any Car for any reason whatsoever.

5.2 Limitations on Lessee's Use. Lessee shall retain on its line no more Cars than are necessary to fulfill its immediate requirements to provide transportation services for shippers on its line. To the extent Lessee has physical possession and/or can control the use of the Cars, Lessee shall not permit (i) use or operation of any Car at any time in contravention of or in non-compliance with the laws of the jurisdiction in which the same may be located or in contravention of or non-compliance with any lawful act, rule, regulation or order of any governmental body or officer having power to regulate or supervise the use of the Car; (ii) use of the Car so as to subject it to more than usual wear and tear or shorten its service life; (iii) assignment of any Car for more than fifty (50) days in any calendar year to any form of

international service or use outside the boundaries of the contiguous United States; (iv) use of a Car for the carriage of a hazardous or corrosive lading; or (v) use of a Car in unit train or other intensive service. Either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any rule, regulation or order relating to the use or operation of the Cars in any reasonable manner at the expense of the contesting party.

5.3 Car Movements. Lessor, as Lessee's agent and at Lessor's option, may issue such movement orders as it considers necessary to maximize utilization of the Cars. Such movements shall be at Lessor's expense and in accordance with applicable ICC and AAR interchange agreements and rules. Lessor shall keep Lessee reasonably advised of such Car movements. Except as expressly provided in the first sentence of this Section 5.3 and in Sections 3.5 and 15, Lessee shall issue movement orders covering the Cars to other lines in accordance with applicable ICC and AAR interchange agreements and rules, which movement shall be made at its expense. Lessee shall keep Lessor reasonably advised of Car movement.

5.4 Loading Preferences. Lessee shall not discriminate against the Cars for interline shipment by loading Other Equipment of the same general type which is not as conveniently available as the Cars; provided, however, Lessee shall load each Car in a Group on its line before loading similar Other Equipment during any period in which the percentage of such Group on Lessee's line exceeds the Group's Maximum On Line Percentage. Such percentage shall be determined by dividing the number of the Cars in the Group on Lessee's line by the total number of the Cars in the Group then subject to this Agreement. Nothing in this Section shall prevent or prohibit Lessee from fulfilling its obligations to provide transportation services for its shippers on its line as required by law.

6. Administration

6.1 Lessee's. Lessee shall at its expense:

- (a) perform all record keeping functions relating to the use of the Cars by it and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation;
- (b) provide Lessor with reports regarding the use of the Cars by Lessee on its line as Lessor may reasonably request;
- (c) collect all Car Hire Revenues due;
- (d) prepare and file on its own behalf and Lessor's behalf all sales and use tax returns and all ad valorem, property and other tax returns required because of the operation, use, lease, or ownership of the Cars during the Term;
- (e) receive and transmit promptly to Lessor all reports or statements regarding repairs or maintenance required by any Car or accidents involving any Car; and
- (f) prepare, execute and file all documents relating to the registration, maintenance, and reports involving the Cars. Such documents and reports shall include, but not be limited to, the following: (i) appropriate AAR documents including any application for relief from AAR Car Service Rules 1 and 2 desired by Lessee and approved in writing by Lessor; (ii) registration in the Official

Railway Equipment Register and the Universal Machine Language Railway Equipment Register in a manner satisfactory to Lessor; and (iii) such reports as may be required from time to time by the ICC and other regulatory agencies.

6.2 Lessor's Assistance. Unless otherwise available to Lessee, Lessor shall provide Lessee any information in Lessor's possession necessary to enable Lessee to perform its obligations under Section 6.1. Lessor shall execute and shall file any tax returns prepared by Lessee which must be executed and filed by Lessor. Lessor shall be entitled to copies of all such returns and reports on request.

6.3 Inspection of Records. All records with respect to the Cars kept by a party hereto, including records of payments, charges and correspondence, shall be separately maintained in a form suitable for reasonable inspection, audit and copying by the other party and its agents from time to time during regular business hours and upon reasonable notice.

7. Maintenance; Loss; Improvements

7.1 Lessor's Responsibility. Except as provided in Section 7.2, Lessor shall bear the cost of any loss of or damage to the Cars, and shall perform, or cause to be performed, at its expense all necessary inspections, repairs, servicing, and maintenance. Lessor and its agents shall have the right at any time during reasonable business hours and upon reasonable notice to inspect any Car then on Lessee's line. Lessee shall cooperate with Lessor whenever Lessor desires to make an inspection of a Car on the line of another railroad. Lessor shall be entitled to and Lessee shall take such action as Lessor may request to assure that Lessor receives all amounts and damages payable by, or due from, any railroad or other person or entity by reason of the loss or damage (whether total or partial) to a Car.

7.2 Lessee's Responsibility. Lessee shall be responsible for and bear the cost of:

(a) any loss of or damage to a Car occurring while on Lessee's line in the same manner that Lessee is responsible under applicable rules including AAR Code of Car Service Rules-Freight, AAR Code of Car Hire Rules and Interpretations-Freight, and AAR Interchange Rules for Cars not owned by Lessee on Lessee's lines;

(b) any damage to the Car, or any maintenance or repairs required for the Car, which exist or are required but are not noted by Lessee at the time the Car is interchanged to it; and

(c) any losses, damages or liabilities resulting from any negligent acts or omissions of Lessee.

Lessee shall perform at Lessor's expense running repairs to facilitate continued and immediate use of the Cars and repairs required by the AAR Interchange Rules for the continued use of the Cars but shall perform no other maintenance or repairs at Lessor's expense except as may be reasonably requested by Lessor. Lessee shall promptly perform in its ordinary course of business any such repair or maintenance requested by Lessor.

7.3 Improvements. Lessee shall not make any alterations, improvements or additions (collectively "Improvements") to the Cars without Lessor's prior written consent. If Lessee makes an Improvement to any Car without Lessor's prior written

consent, Lessee shall be liable to Lessor for any revenues lost due to the Improvement and the costs incurred by Lessor in restoring the Car to its original condition, if restoration is performed, at Lessor's option. Any Improvement shall be an accession to the Car and title to the Improvement shall be and remain with Lessor at no charge or cost to Lessor.

8. Expiration and Extension of Term

8.1 Expiration. Upon the expiration or earlier termination of the Term for a Group, Lessee shall return to Lessor the Car(s) in the Group as directed by Lessor pursuant to Section 10.

8.2 Extension of Term. The Term for each Group shall automatically be extended for not more than five consecutive periods of twelve months each, unless at least twelve months prior to the expiration of such Term or any extension thereof, either party gives notice that such Term shall not be extended as to such Group.

9. Removal of Cars

9.1 Damaged or Destroyed Car. In the event that the destruction or damage beyond repair of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight (or other appropriate rules or regulations) and the appropriate amount due in accordance with AAR Interchange Rule 107 (or other appropriate rules or regulations) as a result thereof is received by Lessor, the Term shall terminate with respect to the damaged or destroyed Car as of the date that earnings of Car Hire Revenues ceased. Lessee shall not be obligated to return such a Car.

9.2 Regulatory Action. If by reason of any change in any law, rule or regulation occurring after the date of this Car Lease, the benefits of this Agreement to Lessor are materially decreased or its obligations are materially increased, Lessor may, at its option, terminate the Agreement with respect to any or all Cars.

9.3 Removal; Lessee's Optional Payment. If at any time during a calendar quarter, the number of hours that the Group has not earned Car Hire Revenues on a year to date basis is such as to make it mathematically certain that the Utilization Percentage for that Group cannot equal or exceed the Minimum Utilization Percentage for that Group at the end of such calendar quarter, then during such quarter or within twenty one (21) days following the end thereof, Lessor may at its option, upon 24 hours written notice to Lessee, terminate this Agreement as to any or all of the Cars in such Group and direct the return of such Cars as provided in Section 10. In such event, Lessee shall have the option exercisable within four (4) days after receipt of Lessor's notice to pay Lessor the difference between (i) the Net Car Hire Revenues for such Group which Lessor has received to the date of the exercise of the option and (ii) the Base Rental for such Group for the year to the end of such quarter. Upon such payment, such Cars shall continue under the terms of this Agreement.

9.4 Seven (7) Day Limitation; Return. If at any time a Car ("Idle Car") remains on Lessee's line for more than seven (7) consecutive days, then Lessor may, at its option, upon twenty four (24) hours written notice to Lessee, terminate this Agreement as to the Idle Car and direct its return as provided in Section 10. Such option shall be exercisable at any time during the period the Idle Car remains on the Lessee's line and for a period of ten (10) days thereafter.

9.5 Seven (7) Day Limitation; Payment. In the event that during any calendar quarter, Lessor has the right to exercise its option under Section 9.4 and during the period the Idle Car remained on the Lessee's line, Lessee breached Section 5.4 with respect to the Cars in the Idle Car's Group, then Lessee, upon demand of Lessor, shall pay Lessor the Net Car Hire Revenues (assuming mileage at the Base Miles Per Day) which such Cars would have earned if they were in the physical possession and use of another railroad during the entire period the Idle Car was on Lessee's line.

10. Return of Cars

10.1 Lessor's Direction; Effect. Upon Lessee's receipt of a direction given by Lessor as permitted by this Agreement to return any or all Cars, Lessee shall return the Cars affected as provided in this Section. A Car shall be deemed returned to Lessor upon the removal of Lessee's railroad markings from the Car, the placing thereon of such markings as may be designated by Lessor, and the surrender of physical control thereof to Lessor. Upon Lessee's receipt of such direction, all amounts earned in respect to the Cars covered by such direction shall belong to Lessor and, if received by Lessee, shall be promptly paid to Lessor.

10.2 Place. Each Car shall be physically returned either on Lessee's line or the line of another railroad, as designated by Lessor. If a Car is not on Lessee's line upon receipt of such direction, any cost of assembling, delivering, storing and transporting the Car to Lessee's line or the line designated by Lessor shall be borne by Lessor.

10.3 Markings; Repainting. If Lessor designates a line other than Lessee's line for delivery, Lessee's railroad markings shall be removed from the Car upon arrival on such line and the markings designated by Lessor shall be placed upon the Car at Lessee's expense. If the Car is on the Lessee's line, or is subsequently returned to Lessee's line, Lessee shall at its own expense within five (5) working days remove Lessee's markings from the Car and place thereon such markings as may be designated by Lessor. Additionally, if this Agreement is terminated with respect to a Car pursuant to Section 9.3 Lessee shall, regardless of the place of return, pay or reimburse Lessor for all costs and expenses incurred by Lessor to repaint the Car and place thereon the name and other insignia of Lessor or its purchaser or subsequent lessee.

10.4 Movement; Storage. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting line for shipment. Lessee shall provide Lessor up to ninety (90) days free storage on its line for each Car commencing on the first arrival of the Car on Lessee's line following direction by Lessor to return the Car.

11. Insurance

11.1 Insurance. At its own expense, Lessee shall maintain in full force and effect, throughout the Term and until the Cars are returned as provided in Section 10.1:

(a) insurance for All Risk of physical damage or loss to the Cars (such insurance shall at least cover the Cars while on Lessee's line, be in amounts and with companies satisfactory to Lessor and include Lessor [and any party designated by Lessor] as an Additional Insured as its respective interests may appear);

(b) public liability insurance (including liability assumed under contract), with respect to the Cars in amounts and with companies satisfactory to Lessor, against any damages resulting from Bodily Injury or death to members of the public, including all employees of Lessee, and for damage to the property of others including the loss of use thereof (Lessor, and any party designated by Lessor, shall be included as an Additional Insured); and

(c) insurance adequate to meet Lessee's statutory responsibility for workers compensation insurances, including occupational disease.

11.2 Insurance Certification. Lessee shall provide Lessor appropriate Certificates of Insurance evidencing the foregoing insurance and providing that such insurance is only cancellable as to Lessor's (and any such designated party's) interest upon thirty (30) days' prior written notice to Lessor.

11.3 Lessee Self Insurance. Lessee may, with Lessor's prior written consent, maintain a self insurance program satisfactory to Lessor in lieu of the coverages required.

12. Taxes. Lessee shall pay all taxes, assessments and other governmental charges of whatsoever kind or character relating to any Car or on the lease, delivery, or operation thereof. Notwithstanding the foregoing Lessor shall pay any sales or use tax due upon the purchase of any Car.

13. Indemnity. Lessor will defend, indemnify and hold Lessee harmless from and against any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars provided, however, Lessor shall not indemnify Lessee or hold Lessee harmless from claims for any consequential damages or loss of profits including such as may result from or be caused by any loss or damage to a Car, or the unavailability of any Car for any reason; and provided, further, in no event shall Lessor be obligated to defend, indemnify, or hold Lessee harmless from:

(a) any loss or damage to any lading or part of any lading carried by any Car;

(b) any loss or damage resulting from Lessee's breach of this Agreement;

(c) any loss or damage to a Car resulting from a failure by Lessee to note damages or necessary repairs or maintenance at the time of interchange of a Car;

(d) any loss or damage of any kind resulting from any negligent act or omission of Lessee; or

(e) any loss or damage of any kind whatsoever, regardless of how caused, occurring upon Lessee's premises or resulting from an occurrence or event involving any Car while on Lessee's premises.

14. Financing; Liens and Encumbrances

14.1 Financing. Lessee's rights hereunder and in the Cars shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor.

14.2 Lessee Liens; Encumbrances. Lessee shall not directly or indirectly

create, incur or assume any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement. Lessee shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

15. Default

15.1 Default. The occurrence of any of the following events shall be an Event of Default.

- (a) The nonpayment by Lessee or Lessor of any sum required herein to be paid within ten days after the date any such payment is due.
- (b) The breach by Lessor or Lessee of any other term, covenant, or condition of this Agreement or of any other agreement between Lessor and Lessee, or the failure of any representation or warranty of Lessee made herein in connection with this Agreement to be true or accurate in every material respect when made, which breach is not cured or misrepresentation corrected within ten days after written notice.
- (c) Any act of insolvency by Lessee or Lessor, or the filing by Lessee or Lessor of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
- (d) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee or Lessor that is not dismissed with sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee or Lessor, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.
- (e) Any action by Lessee to discontinue rail service on all or a portion of its line or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action, in the opinion of Lessor, is likely to decrease utilization of a Group below its Minimum Utilization Percentage during the remaining Term.

15.2 Remedies on Event of Default. Upon the occurrence of any Event of Default by one party, the other party may with or without terminating this Agreement proceed by any lawful means to enforce performance of any obligations and/or to recover damages for the breach thereof. Any such termination shall not release (a) Lessee from its obligation to return the Cars; (b) either party from any obligation to pay any sums that may then be due or accrue to such date or which result from said Event of Default; or (c) either party from the obligation to perform any duty or obligation or to pay any damages for the breach thereof.

Upon any Event of Default by Lessee, Lessee shall, at Lessor's option, return the Cars and perform the other obligations set forth in Section 10. Lessor may enter upon any premises of Lessee where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. If a Car is not on Lessee's line at the time Lessor directs its return, Lessee hereby appoints Lessor its agent in fact to direct all movements of the Car. Lessee shall

also take all action reasonably requested by Lessor to effect the prompt return of any Car to it.

In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover (i) reasonable attorney's fees in such action and (ii) such other expenses or costs of such action as it shall have incurred.

The above remedies are cumulative and in addition to any and all remedies either party may have at law or in equity.

16. Representations and Warranties. Lessee and Lessor respectively represent and warrant that at the time of execution of this Car Lease and each Schedule thereto, and the Delivery Date of any Car that:

(a) Lessee and Lessor are corporations duly organized, validly existing and in good standing under the laws of the respective states where they are incorporated and have the corporate power, authority and are duly qualified and authorized to do business wherever necessary, to carry out their present business and operations and to own or hold under lease their properties and to perform their obligations under this Agreement;

(b) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee or Lessor;

(c) There is no action or proceeding pending or threatened against Lessee or Lessor before any court or administrative agency or other governmental body which might affect the enforceability of this Agreement or result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessor or Lessee;

(d) There is no fact or occurrence which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of Lessee to perform its obligations under this Agreement;

(e) All data, projections and other information provided by Lessee regarding utilization levels anticipated for the Cars was true and correct to the best knowledge and belief of Lessee when provided and no circumstance or event has occurred which would have a material adverse effect on such utilization levels which has not been disclosed to Lessor in writing.

17. Miscellaneous

17.1 Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Lessee may not without the prior written consent of Lessor assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessor may, without the consent of Lessee, assign this Agreement to any affiliated corporation, or assign a security interest therein to any party, but such assignment shall not reduce or otherwise affect Lessor's liability for the full and timely performance of this Agreement.

17.2 Further Assurances. Both parties shall execute such documents as may be required in furtherance of any financing party's interest in and to the Cars and this

Agreement and to confirm the subordination provisions contained in Section 14.1. The parties shall take any and all other action as is reasonable or necessary to effect the transactions set forth in or contemplated by this Agreement.

17.3 No Joint Ventures. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation and payment of the rental, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a lessee only.

17.4 Waivers. No failure or delay by Lessee or Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessee or Lessor, nor shall any waiver or indulgence by Lessee or Lessor, or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The subsequent acceptance of any payment hereunder by one party, or payment thereof by the other party, shall not be deemed a waiver of any preceding breach by Lessee or Lessor of any agreement, condition or provision of this Agreement, other than the failure to pay the particular amount so accepted, regardless of Lessee's or Lessor's knowledge of such preceding breach at the time of payment of such sum.

17.5 Governing Law. To the extent not preempted by federal law, this Agreement shall be governed by and construed according to the laws of the State of California.

17.6 Notices. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the address set forth at the end of this Car Lease or such other addresses as may be designated in writing from time to time by one party to the other.

17.7 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any previous written or oral agreements in connection therewith. Any change or modification of this Agreement or waiver of any right under this Agreement must be in writing and signed by the parties. To the extent any provision of Section 1 is inconsistent with any later provision of this Agreement, such later provision shall govern.

17.8 Severability. In the event that any terms of this Agreement shall be or becomes or is declared to be illegal by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed deleted from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.

17.9 Headings. All section or paragraph headings or titles are for convenience only and shall not be considered part of the text of this Agreement.

17.10 Sale of Lessee's Railroad. If Lessee intends to sell any significant portion of its railroad tracks then, prior to commencing negotiations with any other party, Lessee shall notify Lessor and give Lessor a reasonable opportunity to negotiate for the purchase thereof, if Lessor desires.

17.11 Corporate Authority. Lessee shall deliver as soon as possible but not more than sixty days following execution of this Car Lease or any Schedule a

certificate of its secretary or assistant secretary setting forth the resolutions of Lessee approving and authorizing the execution and delivery of this Car Lease and any Schedule and certifying that such resolutions are in full force and effect as of the date of the certificate.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

UNITED STATES RAIL SERVICES,
INC.

By

[Signature]
its Sr. V.P.

AMERICAN RAIL HERITAGE, LTD.

Lessee

By

[Signature]
its President

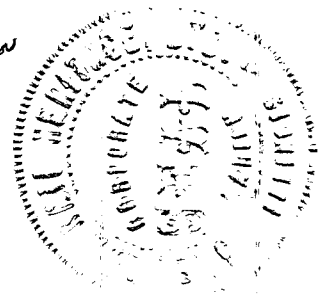
Address for Notices:

United States Rail Services,
633 Battery Street
San Francisco, CA 94111

Address for Notices:

Crab Orchard & Egyptian
514 N. Market St.
Marion, Illinois 62959

Attention: Senior Vice President



STATE OF ILLINOIS)
COUNTY OF WILLIAMSON)

SS

On this 16 day of NOV, 1979, before me personally appeared HUGH W CRANE, (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the PRESIDENT (title of office) of AMERICAN RAIL HERITAGE LTD (name of corporation), a ILLINOIS corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

My commission expires:

~~September 13, 1981~~
September

Gloria A. Barnes
Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF CALIFORNIA COUNTY OF SAN FRANCISCO SS:

On this 16th day of November, in the year 19 79, before me Sylvia P. Ferras a Notary Public in and for said county, personally appeared David M. Mendelsohn, known to me to be the Senior Vice President of the corporation that executed the
(Title)

within instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

Sylvia P. Ferras
(Notary Public)

SAN FRANCISCO

COUNTY: CALIFORNIA
(State)

(Notarial Seal)

My Commission Expires: _____

